

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION  
No. 4:16-CV-288-D

J.O.C. FARMS, LLC.,

Plaintiff,

v.

SONNY PERDUE, Secretary of  
Agriculture for the United States of America,  
HEATHER MANZANO, Administrator for  
the Risk Management Agency, United States  
Department of Agriculture, and the  
RISK MANAGEMENT AGENCY, United  
States Department of Agriculture,

Defendants.

**ORDER**

On June 15, 2017, defendants moved to dismiss plaintiff's verified complaint for failure to state a claim upon which relief can be granted, or alternatively for judgment on the pleadings [D.E. 19], and filed a memorandum in support [D.E. 20]. On July 28, 2017, plaintiff responded in opposition and requested discovery in this case [D.E. 26]. On August 10, 2017, defendants replied [D.E. 27].

The court denies defendants' motion to dismiss [D.E. 19]. The court also denies plaintiff's motion for discovery because plaintiff has not met its burden of proving that discovery is proper in this case under the Administrative Procedure Act. See, e.g., NVE, Inc. v. Dep't of Health & Human Servs., 436 F.3d 182, 195 (3d Cir. 2006); Voyageurs Nat'l Park Ass'n v. Norton, 381 F.3d 759, 766 (8th Cir. 2004); Commercial Drapery Contractors, Inc. v. United States, 133 F.3d 1, 7-8 (D.C. Cir. 1998); Fort Sumter Tours, Inc. v. Babbitt, 66 F.3d 1324, 1335-36 (4th Cir. 1995); United

States v. Rouseco, Inc., No. 4:11-CV-00035-F, 2012 WL 525537, at \*2–4 (E.D.N.C. Feb. 16, 2012) (unpublished); Tafas v. Dudas, 530 F. Supp. 2d 786, 794–99 (E.D. Va. 2008).

In sum, the court DENIES defendants' motion to dismiss [D.E. 19]. The parties shall file cross-motions for summary judgment by November 13, 2017.

SO ORDERED. This 11 day of October 2017.

  
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JAMES C. DEVER III  
Chief United States District Judge